

Speedway SuperAmerica LLC
d/b/a Speedway
1350 South US 31
Greenwood, IN 46142

Permit #DL41-98166
District 6

PROPOSED FINDINGS OF FACT
AND CONCLUSION OF LAW

I.
BACKGROUND OF THE CASE

The Applicant, Speedway SuperAmerica LLC (“Applicant”), 1350 South US 31, Greenwood, IN 46142, applied for a new type 115 Alcoholic Beverage Commission (“ABC”) dealer permit, permit #DL41-98166, on April 26, 1998. The application was assigned to the Johnson County Local Board (“LB”) for investigation. The LB investigated said application and on July 13, 1998, voted by a 3-1 margin to recommend non-approval of this application. The ABC voted to adopt the recommendation of the LB on July 21, 1998 and voted to deny this application.

The Applicant filed a timely notice of appeal and the matter was set for an appeal hearing before ABC Hearing Judge Daniel M. Steiner (“HJ”). The Applicant, represented by Attorney Brian Burdick, appeared before the HJ on December 3, 1998. At that time the remonstrators were present in the person of John Livengood. At that time, witnesses were sworn, exhibits were introduced and admitted, testimony was given, and the HJ took the matter under advisement. After having said matter under advisement, the HJ now makes his recommendation in the form of Proposed Findings of Fact and Conclusions of Law to the ABC.

II.
EVIDENCE AT THE HEARING

A.
WITNESSES

The following witnesses were sworn and provided testimony at the appeal hearing:

1. Glen Bahr (“Bahr”), an operations manager for the Applicant’s parent LLC.

2. Ann Gibson (“Gibson”), a district manager for Applicant, whose district covers the proposed premises herein.
3. Beth A. Walton (“Walton”), manager of the Applicant’s store, whose premises are in question herein.
4. John Livengood (“Livengood”), executive director of the Indiana Association of Beverage Retailers and lead remonstrator in this matter.

B.
EXHIBITS

The following exhibits were introduced and admitted into evidence at the appeal hearing:

1. Applicant’s Exhibit 1, (in 2 parts), consisting of a depiction of the Applicant’s premises before and after recent remodeling.
2. Applicant’s Exhibit 2, consisting of a diagram floor plan of the inside of Applicant’s proposed premises.

In addition to the above exhibits, the HJ took administrative notice of all matters within this Applicant’s file, including the transcript of the above-mentioned LB hearing and all matters pertaining to the LB hearing.

III.
PROPOSED FINDINGS OF FACT

1. The Applicant, Speedway SuperAmerica LLC, 1350 South US 31, Greenwood, IN 46142, filed its application for a type 115 permit, permit #DL41-98166. (ABC files)
2. The Applicant is not disqualified from holding an ABC permit pursuant to IC 7.1-3-4-2. (ABC files)
3. The Applicant’s proposed premises is not within 200 feet of a church or school. (ABC files)
4. The Applicant’s proposed premises is not in a residential area as defined by IC 7.1-1-3-38, IC 7.1-3-19-13, and 905 IAC 1-18-1.
5. The Applicant is of good moral character and of good repute in the community in which it exists. (ABC appeal hearing)
6. There is a need for the Applicant’s services at its proposed premises as shown by a survey conducted by the Applicant. (Testimony of Bahr at ABC appeal hearing)

7. Speedway SuperAmerica LLC is currently the holder of 57 ABC dealer permits throughout the State of Indiana and has not been cited by the Indiana State Excise Police for violations. (Testimony of Gibson)
8. At the proposed premises herein, the Applicant stocks grocery items including milk, bread, cereal, syrup, soup, cheese, flour, sugar, tuna, lunch meats, prepared sandwiches, all types of drinks, condiments, canned vegetables, ice cream, frozen TV dinners, and snack items such as chips, cookies, and crackers. (ABC appeal hearing testimony of Gibson)
9. The Applicant, at the proposed premises, always has one (1) to three (3) employees on duty at all times and all employees of Applicant must be at least 21 years of age to sell alcoholic beverages and upon a first violation of ABC laws, employees are immediately terminated. (ABC appeal hearing testimony of Gibson)
10. The Applicant gives each new employee a handbook regarding laws and procedures regarding alcohol and tobacco sales and after 30 days they are required to attend the company conducted seminar regarding alcohol sales. (ABC appeal hearing testimony of Gibson)
11. Livengood testified that a granting of a particular permit at this location would have an adverse impact on members of Livengood's Association in their businesses in this area, which is a factor to be considered in determining whether this permit should be granted pursuant to 905 IAC1-27-4(c). (Appeal hearing testimony of Livengood)

IV. CONCLUSIONS OF LAW

1. The Applicant, Speedway SuperAmerica LLC, 1350 South US 31, Greenwood, IN 46142, filed its application for a type 115 permit, permit #DL41-98166. (ABC files)
2. The Applicant is not disqualified from holding an ABC permit pursuant to IC 7.1-3-4-2. (ABC files)
3. The Applicant's proposed premises is not within 200 feet of a church or school. (ABC files)
4. The Applicant's proposed premises is not in a residential area as defined by IC 7.1-1-3-38, IC 7.1-3-19-13, and 905 IAC 1-18-1.
5. Applicant is of good moral character and of good repute in the community in which it exists. (ABC appeal hearing)

6. Applicant meets the character of business test for a grocery store. (ABC appeal hearing)
7. There has been shown a need for Applicant's services at this location. (ABC appeal hearing)
8. To grant the permit at this location would have an adverse impact on businesses in the community as prescribed by 905 IAC 1-27-4.
9. That while the LB did not find directly that the granting of this permit would have an adverse impact on businesses in this community, the evidence at the de novo hearing herein as supplied by Livengood provides substantial evidence to support a conclusion that the granting of a permit at this premises would have an adverse impact on the business in this community.

THEREFORE, based on the evidence provided by Livengood at the de novo appeal hearing on this matter, it should be and hereby is the finding and conclusion of the HJ that the granting of a permit to this applicant at this location would create an adverse impact on the businesses in the Applicant's community in violation of 905 IAC 1-27-4. Therefore the denial of this application by the ABC is upheld and the Applicant's application for this permit is hereby denied.

Date _____

Daniel M. Steiner, Hearing Judge